

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

POLARIS IMAGES CORPORATION,

Plaintiff,

- against -

TEGNA INC.

Defendant.

Docket No. 1:18-cv-00910

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Polaris Images Corporation (“Polaris Images” or “Plaintiff”) by and through its undersigned counsel, as and for its Complaint against Defendant Tegna Inc. (“Tegna” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of NFL football player Aaron Hernandez’s pregnant fiancée Shayanna Jenkins, owned and registered by Polaris, a professional photography agency. Accordingly, Polaris Images seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Texas.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Polaris Images is an independent professional photography agency that represents content owners around the world. Polaris Images has exclusive distribution relationships with some of its contributors. Polaris Images has principle place of business at 259 W 30th St Suite 803, New York, NY 10001.

6. Upon information and belief, Tegna is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business 3201 Steck Avenue, Austin, TX 78757. At all times material, hereto, Tegna has owned and operated nine different websites at the URLs: www.kvue.com, www.wltx.com, www.ktvb.com, www.kgw.com, www.wfmynews2.com, www.wfaa.com, www.whas11.com, www.kens5.com, and www.fox15abilene.com (the “Websites”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Enid Ricci, a professional photographer, who has an exclusive licensing agreement with Polaris Images, owns the copyright to the photograph of NFL football player Aaron Hernandez’s pregnant fiancée Shayanna Jenkins (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Polaris Images is Enid Ricci’s exclusive licensing agent.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-104-176 and titled “5_22_2018(279).jpg.” See Exhibit B.

B. Defendant’s Infringing Activities

10. On or about May 23, 2018, Tegna ran an article on their Websites titled *Aaron Hernandez's Fiancée Shares Photo Of Baby Bump Announcing She's Pregnant*. See URL'S <https://www.kvue.com/video/syndication/veuer/aaron-hernandezs-fiancee-shares-photo-of-baby-bump-announcing-shes-pregnant/602-8137568>.
<https://www.wltx.com/video/syndication/veuer/aaron-hernandezs-fiancee-shares-photo-of-baby-bump-announcing-shes-pregnant/602-8137568>.
<https://www.ktvb.com/video/syndication/veuer/aaron-hernandezs-fiancee-shares-photo-of-baby-bump-announcing-shes-pregnant/602-8137568>.
<https://www.kgw.com/video/syndication/veuer/aaron-hernandezs-fiancee-shares-photo-of-baby-bump-announcing-shes-pregnant/602-8137568>.
<https://www.wfmynews2.com/video/syndication/veuer/aaron-hernandezs-fiancee-shares-photo-of-baby-bump-announcing-shes-pregnant/602-8137568>.
<https://www.wfaa.com/video/syndication/veuer/aaron-hernandezs-fiancee-shares-photo-of-baby-bump-announcing-shes-pregnant/602-8137568>.
<https://www.whas11.com/video/syndication/veuer/aaron-hernandezs-fiancee-shares-photo-of-baby-bump-announcing-shes-pregnant/602-8137568>.
<https://www.kens5.com/video/syndication/veuer/aaron-hernandezs-fiancee-shares-photo-of-baby-bump-announcing-shes-pregnant/602-8137568>.
<https://www.fox15abilene.com/video/syndication/veuer/aaron-hernandezs-fiancee-shares-photo-of-baby-bump-announcing-shes-pregnant/602-8137568>. These articles prominently featured the Photograph as part of a video. Screen shots of each of these articles with the Photograph are attached hereto as Exhibit C.

11. Tegna did not license the Photograph from Plaintiff for its article, nor did Tegna have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Tegna infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Tegna is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Tegna be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded its costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
October 23, 2018

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